IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5929 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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S.B. BAROT SOCIAL WORKER

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 5929 of 2003

MR IS SUPEHIA for Petitioner No. 1

MS. REETA CHANDARANA, AGP, Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 06/09/2004

ORAL JUDGEMENT

Heard the learned advocate Shri Supehia for the petitioner and Mrs.Reeta Chandarana, AGP for the respondents.

2. In the present petition, the petitioner has challenged the order dated 10th April 2003, by which the respondents had ordered to refix the pay of the petitioner from the scale of Rs.1640-2900 to that of Rs.1400-2300. It is the case of the petitioner that the petitioner is working as Social Worker with effect from 22nd October 1973. At the time when she was appointed to the said post the scale was Rs.250-480. Pursuant to the Gujarat Civil Services (Revision of Pay) Rules, 1975, the pay-scales for the post in question was revised to Rs.425-700/-. By resolution dated 20th October 1978, it was provided that the pay-scale for the post of Social Worker would be Rs.550-900 for those incumbents, who hold the post graduate degree in MSW or Sociology and for others it was Rs.425-700/-. By further revision of the pay-scales, pursuant to Gujarat Civil Services (Revision of Pay) Rules, 1987, pay-scale of Social Worker was revised from that of Rs.550-900 to Rs.1640-2900 for those holding post graduate degree in MSW and for others, the pay-scale of Rs.425-700 was revised to that of Rs.1400-2300/-. It is the case of the petitioner that the petitioner was already given the pay-scale of Rs.1640-2900/- which pay-scale she enjoyed for number of years. It was only when the petitioner requested the respondents to grant her the benefits of pay-revision on account of her stagnation in the pay-scale, the respondents have sought to disturb the pay-scale of the petitioner from the very inception by the impugned order dated 10th April 2003. It is the case of the petitioner that the petitioner is entitled to the pay-scale of Rs.1640-2900 and that there was no error in fixing the pay of the petitioner in the said scale. The petitioner in the petition has also stated that under identical circumstances, one Smt.Dipti Somani whose pay also was initially fixed in the scale of Rs.1640-2900 and was later on sought to be revised in the scale of Rs.1400-2300 had approached this Court by filing Special Civil Application No.685 of 1990 and upon reconsideration, the respondents have granted the scale of Rs.1640-2900 to the said Smt.Dipti Somani with effect from 1.1.86. It is the case of the petitioner that her case is factually identical to that of Smt.Dipti Somani and that therefore she is also entitled to the same scale. The petitioner has also questioned the impugned order on the ground that before passing the said order, no opportunity of hearing was given to the petitioner.

3. Appearing for the respondent, learned AGP has contended that the scale of Rs.1640-2300 is available to only those persons who are holding Masters degree in MSW

and since the petitioner is admittedly having Masters Degree in Sociology, she is not entitled to the higher scale. The learned AGP has also relying on the decision of D.M.Patel v. State, reported in 41(4) GLR 3103 contended that this being a pure case of correction of mistake, opportunity of hearing is not necessary.

4. Having considered the rival submissions, I find that the pay-scale of Rs.550-900 was made available to those Social Workers who were having post-graduate degree in MSW or Sociology whereas for rest of them, lower scale of Rs.425-700 was prescribed. I also find that the scale of Rs.550-900 was revised to that of Rs.1640-2900 while the scale of Rs.425-700 was revised to that of Rs.1400-2300. For the higher scale, a rider was put that the same would be available only to those having postgraduate degree in MSW. Here the qualification of holding Master's degree in Sociology was not recognized as one of the sufficient conditions for receiving the higher scale of Rs.1640-2900. The question, therefore, may arise as to how to regulate the pay-scale of a Social worker who has received the pre-revised scale of Rs.550-900 which scale now got revised to that of Rs.1640-2900, but is made available to those social workers who are possessing post-graduate degree in MSW. It would be neither necessary nor appropriate on my part to opine on this issue, in view of the conclusion which I am about to reach in this matter.

5. Admittedly, before passing the impugned order dated 10th April 2003, no show cause notice or any other form of opportunity was afforded to the petitioner by the respondents. In view of the fact that the issues arising in this petition require consideration of number of relevant factors, including the contention of the petitioner that under identical circumstances, Smt.Dipti Somani who is also a social worker, has been given higher pay-scale of Rs.1640-2900, I find that the impugned order could not have been passed without hearing the petitioner. It is not a case where the respondents can be allowed to change pay fixation of the petitioner after number of years in the guise of correction of a simple error. Therefore, the ratio of the judgment reported in 41(4) GLR page 3103 (supra) cannot be applied to the present case. In the above referred decision also, one finds that the earlier action of the Government was challenged on the ground that principles of natural justice were violated and the Court had directed the respondents to decide the representation of the petitioner, which was considered and decided and this Court therefore found that there was no violation of

principles of natural justice. The facts of the said case, therefore, can be distinguished from the present petition.

6. Apart from the prospective correction of pay fixation, the impugned order also results into the petitioner being liable to refund the excess payment made by the respondents. Such an order which results into civil consequences adverse to the petitioner could not have been passed without hearing the petitioner. In number of decisions this Court as well as the Hon'ble Supreme Court had taken the view that if the excess payment is not on account of misrepresentation on behalf of the petitioner, the same cannot be recovered. I do not propose to give any final opinion on this aspect of the matter also since the question of recovery depends on facts of each case.

7. In conclusion, I find that the impugned order dated 10th April 2003 was passed in total violation of the principles of natural justice and the same is required to be quashed. It will be for the respondents to pass fresh orders in accordance with law after affording reasonable opportunity to the petitioner of being heard.

8. In view of the fact that the order is being quashed on the ground of non-hearing, I do not make any observations with respect to the merits or demerits of the rival contentions. It will be open for the petitioner to raise all contentions before the authorities and it will be equally open for the respondents to pass fresh order in accordance with law after hearing the petitioner as mentioned above.

9. In the result, the petition succeeds to the above extent and is rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)